

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THOMAS ALLEN DAVIS, JR., :
Petitioner, :
v. : Case No. 3:13-cv-13-KRG-KAP
DANIEL BURNS, WARDEN, S.C.I. :
FOREST, :
Respondent :
:

Order

Petitioner's motion to re-open the judgment in this matter, ECF no. 43, was referred to Magistrate Judge Keith A. Pesto in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72. The Magistrate Judge filed a Report and Recommendation on May 19, 2020, ECF no. 44, recommending that the motion be granted and that the Court consider *de novo* any objections filed by petitioner.

The parties were notified pursuant to 28 U.S.C. § 636(b)(1) that they had fourteen days to file written objections to that Report and Recommendation. No one filed objections in that time, but petitioner filed objections at ECF no. 46 to the original Report and Recommendation at ECF no. 34. The objections included argument on an Alleyne claim that was not addressed in the Report and Recommendation at ECF no. 34 because the petition did not originally assert an Alleyne claim and the petition was never amended to assert an Alleyne claim. Petitioner also filed a motion for the appointment of counsel at ECF no. 45.

Upon consideration of the motion at ECF no. 43 and the Report and Recommendation at ECF no. 44, the motion is granted and the judgment in this case is vacated. The Clerk shall re-open the case.

However, after *de novo* review of the record, including the objections filed at ECF no. 46, I again deny the petition and again deny a certificate of appealability. The Report and Recommendation at ECF no. 34 is adopted in relevant part as the opinion of the Court; the Alleyne claim is dismissed as untimely. The Clerk shall mark this matter closed.

The motion for appointment of counsel, ECF no. 45, is denied without prejudice to seeking appointment of counsel in the Court of Appeals.

BY THE COURT:

DATE: JUNE 8, 2020



KIM R. GIBSON
UNITED STATES DISTRICT JUDGE